

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANIEL LARA HERMOSILLO,

Petitioner,

VS.

MARIA DOLORES GUITERREZ,

Respondent.

4:05CV3240

MEMORANDUM AND ORDER

SEALED

Pursuant to Fed. R. Civ. P. 65(b), the court finds that there is a threat of irreparable harm to the custody rights of Petitioner, Daniel Lara Hermosillo, and the well-being of the parties' minor child, Pedro Daniel Hermosillo Gutierrez, if Respondent, Maria Dolores Guterrez, or any other person were to remove the child from the jurisdiction of this court prior to a hearing on the merits of the Petition for Return of Child filed herein. In particular, the court finds that no advance notice should be given prior to the issuance of a temporary restraining order because there is credible evidence to believe that Respondent has unlawfully removed the minor child from the child's prior place of residence in Mexico, and there is a threat that Respondent would do the same thing in this matter absent the issuance of an ex parte restraining order.

In the light of all of the circumstances known to the court and upon a balance of the equities, the court concludes that an ex parte temporary restraining order should issue, other subsidiary orders should likewise be issued, and Respondent, Maria Dolores Guterrez, should be enjoined and notified of the proceedings.

Therefore,

IT IS ORDERED that:

1. Neither Respondent, Maria Dolores Guterrez, nor any person acting in concert or participating with her shall take any action to remove the child, Pedro Daniel Hermosillo Gutierrez, from the jurisdiction of this court pending a determination by this court on the Petition for Return of Child.
2. Respondent shall show cause why the child, Pedro Daniel Hermosillo Gutierrez, should not be returned to the custody of Petitioner, Daniel Lara Hermosillo, and why such other relief as is requested in the Petition for Return of Child should not be granted at a hearing on October 5, 2005, at 4:30 p.m., in Courtroom No. 1 at the United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, or at such other date, time, or place certain as this court may set by subsequent order.
3. This temporary restraining order shall expire upon conclusion of the expedited hearing on the Petition for Return of Child scheduled for October 5, 2003, unless prior to that time, the order is extended, upon good cause shown, for a further ten days, the parties consent to a longer period, or the hearing is continued upon good cause shown and this order is extended until the time of such hearing.
4. This temporary restraining order shall be binding upon the parties to this action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order.
5. This temporary restraining order shall issue immediately. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, at or before the hearing on October 5, 2005, or such time as the hearing may be

rescheduled, Petitioner, Daniel Lara Hermosillo, shall post a bond in the amount of \$100.

6. Pursuant to Federal Rule of Civil Procedure 17(c) and the Amended Plans for the Administration of the Federal Practice Fund and Federal Practice Committee, ¶ III B., the following person is appointed as guardian ad litem for the minor child and as counsel for the guardian ad litem:

Joel G. Lonowski
Morrow, Poppe, Otte, Watermeier & Phillips
201 N. 8th St. #300
P. O. Box 83439
Lincoln, NE 68501-3439
(402) 474-1731
(402) 474-5020 fax
E-Mail: jlonowski@morrowpoppelaw.com

The Clerk of the Court shall provide Mr. Lonowski with a copy of this memorandum and order.

7. The United States Marshal shall serve a true and correct copy of this document, and of the Petition for Return of Child, upon Respondent, Maria Dolores Guterrez, at 539 Grove Avenue, Crete, Nebraska 68333. (Respondent is alleged to be residing with Domingo Perales Marquez.) The Clerk of the Court shall provide the Marshal with copies of the documents for service.
8. In addition to the foregoing, Respondent, Maria Dolores Guterrez, is specifically notified of the following and ordered to comply with the following directions:

A. A show cause hearing, at which Respondent is required to show cause why the parties' minor child, Pedro Daniel Hermosillo Gutierrez, should not be returned to the custody of Petitioner, Daniel Lara Hermosillo, and why such other relief as is requested in the Petition for Return of Child should not be granted, has been scheduled on October 5, 2005, at 4:30 p.m., in Courtroom No. 1 at the United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska. Pursuant to Neb. Rev. Stat. § 43-1255, this court may and hereby does order the appearance of the child and custodian together. Respondent is notified that at the hearing the court may order that Petitioner take immediate physical custody of the child and may issue such further and other orders as may be appropriate.

B. Respondent, Maria Dolores Guterrez, who is alleged to be the custodian of the minor child, Pedro Daniel Hermosillo Gutierrez, shall personally appear at the show cause hearing and shall provide for the appearance and physical presence of the minor child, Pedro Daniel Hermosillo Gutierrez, at the show cause hearing that is scheduled on October 5, 2005, at 4:30 p.m., in Courtroom No. 1 at the United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, or at such other date, time, or place certain as this court may set by subsequent order.

9. This document shall be sealed.

September 28, 2005.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge